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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

LONNIE LEE ODELL HOLMES,

Defendant and Appellant.

E049002

(Super.Ct.No. RIF138996)

OPINION

APPEAL from the Superior Court of Riverside County. Patrick F. Magers,  
Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon and Lilia E.  
Garcia, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found defendant Lonnie Lee Odell Holmes guilty of assault with a deadly weapon<sup>1</sup> (Pen. Code, § 245, subd. (a)(1));<sup>2</sup> possessing a short-barreled shotgun (§ 12020, subd. (a)(1)); being a felon in possession of a firearm (§ 12021, subd. (a)(1)); actively participating in a criminal street gang (§ 186.22, subd. (a)); and being a felon in possession of ammunition (§ 12316, subd. (b)(1)). The jury found true the allegations that defendant committed the offenses of (1) being a felon in possession of a firearm, and (2) possessing a short-barreled shotgun, in order to benefit a criminal street gang. (§ 186.22, subd. (b)(1).) Defendant admitted suffering two prior convictions, which resulted in prison terms (§ 667.5, subd. (b)); and one prior strike conviction (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)). The trial court sentenced defendant to state prison for a term of nine years. Defendant contends that the evidence supporting his gang enhancements (§ 186.22, subd. (b)(1)), and his conviction for actively

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<sup>1</sup> In regard to the verdict in count 1, the clerk's transcript reads, "We the jury in the above entitled action find [defendant] GUILTY, in count 01 of a violation of section 245(A)(1) [of the Penal Code]. [¶] We the Jury in the above entitled action find the defendant . . . did not commit an assault . . . with a deadly weapon." The clerk's transcript reflects that defendant was sentenced to state prison for the conviction in count 1.

The reporter's transcript reflects, "We, the jury in the above-entitled action, find [defendant] guilty of a violation of Section 245, subdivision (a), subsection (1) of the Penal Code, assault with a deadly weapon . . . ."

We conclude that the not guilty finding recorded in the clerk's transcript was an error, based upon the overwhelming indications that defendant was found guilty of count 1. (See *People v. Malabag* (1997) 51 Cal.App.4th 1419, 1422 [circumstances of an individual case determine whether a clerk's transcript or reporter's transcript controls, when the record is contradictory].)

<sup>2</sup> All further statutory references will be to the Penal Code, unless otherwise indicated.

participating in a criminal street gang (§ 186.22, subd. (a)), does not meet the substantial evidence standard. We affirm the judgment.

### **FACTUAL AND PROCEDURAL HISTORY**

On the night of September 15, 2007, the victim's wife hosted a surprise 65th birthday party for the victim, at the victim's home in the Mead Valley area of Perris. Approximately 60 to 75 people attended the birthday party. The victim knew defendant since the time defendant was a baby, and was like an uncle to defendant.

During the birthday party, defendant and another person argued with each other. Various guests told the victim that he needed to ask defendant to leave the party. The victim told defendant to "just go on home." Defendant left the party, but returned with a pit bull. Defendant ordered the pit bull to attack people at the party. The pit bull aggressively ran towards a group of party guests, but one of the guests struck the dog's head with a metal pipe or a shovel. The pit bull yelped, turned around, ran back towards defendant's vehicle, and entered the vehicle. Defendant ordered the dog to exit the car, but the dog did not obey the command. Defendant said, "I'll shoot all you mother fuckers." Defendant then drove away from the party, "parked down the street a little ways," and stood outside of his vehicle. Defendant yelled at the party guests and the victim.

The victim approached defendant. Defendant held his hands inside his pants as though he was holding a firearm. The victim's daughter called 911, and informed the dispatcher that party guests saw defendant waving a gun in the air. The victim's daughter requested that "Officer Johnson" be contacted about her 911 call because

“that’s who they told [them] to call if [they] had some problems [during the party].”

After the victim spoke to defendant, defendant drove away.

Riverside County Sheriff’s Investigator Johnson was on patrol the night of the victim’s birthday party. Investigator Johnson monitored the victim’s party throughout the night, because he had previously arrested several Mead Valley Gangster Crip members who frequented the house. Investigator Johnson named three individuals that he arrested at different locations, who admitted being members of the Mead Valley Gangster Crips and who frequented the victim’s home, including the victim’s son.

Three days later, on September 18, 2007, Investigator Johnson decided to conduct a parole search at defendant’s residence, and arrest defendant for the incident at the victim’s home. When Investigator Johnson arrived at defendant’s residence along with several detectives, he saw defendant driving off the property with a male passenger. A detective blocked defendant’s path, and defendant stopped his car. Defendant exited the car and was placed in handcuffs. The passenger in defendant’s car admitted to Investigator Johnson that he was associated with the Compton Crips.

A house, a mobile home, and a travel trailer were situated on the property where defendant resided. Defendant lived in the travel trailer, which had a Chevrolet Impala parked in front of it. Defendant was stopped while driving a Ford Focus that belonged to his girlfriend. Defendant told the investigator that a pit bull was inside his trailer; the dog had puppies, and it would bite. While waiting for animal control to arrive, Investigator Johnson spoke to Mr. Timmons, who was at the property where defendant resided. Mr. Timmons said that the Impala belonged to defendant. Investigator

Johnson retrieved the keys from the Ford Focus, and pressed a button on a black remote control attached to the key chain. Upon pressing the button, the doors of the Impala unlocked.

Investigator Johnson searched the Impala and found seven grams of marijuana; a black baseball hat with a large gold letter “P” on the front of it and smaller gold “P”s covering the remainder of the hat; and six live .410 shotgun rounds. After the car was searched, animal control arrived. The pit bull growled, barked, and snapped at the investigator and animal control officer. Eventually, the passenger from defendant’s car removed the dog from defendant’s residence.

Investigator Johnson found a safe in the shower area of defendant’s trailer. The investigator used a key from the keys that were inside the Ford Focus to open the safe. Inside the safe, the investigator found a sawed-off .410-gauge shotgun and “multiple” bags of marijuana, with each bag containing 26 to 32 grams of marijuana. Legal shotguns have a minimum barrel length of 18 inches, and a total minimum length of 26 inches. Defendant’s shotgun had an 8-inch barrel, and a total length of 14.5 inches. The primary purpose of sawing-off a shotgun is to make the gun easier to conceal.

Riverside County Sheriff’s Investigator Bender was assigned to a department that investigated crimes involving drugs. Investigator Bender found that marijuana dealers often used pit bulls for protection. Investigator Bender opined that defendant possessed marijuana for sale, based upon the quantity of marijuana found in defendant’s safe and the manner in which it was packaged, i.e. separated into different baggies.

Riverside County Sheriff's Correctional Deputy Marshall-Gutierrez was assigned to the Robert Presley Detention Center. The correctional deputy interviewed defendant on April 15, 2008, for purposes of an inmate assessment. Defendant told the correctional deputy that he was a member of the Perris Loc Crips, and that his gang moniker was Smoke. The correctional deputy testified that defendant had the word "Smoke" tattooed on his right arm. Correctional Deputy Marshall-Gutierrez saw a note in defendant's correctional file from Deputy Boyle, which reflected that on September 18, 2007, defendant was identified as a member of the Perris Loc Crips and used the gang moniker Smoke.

When looking at defendant's correctional file, the earliest date in which defendant was identified as a gang member was November 26, 2005. The notes from that day read, "Claims to be a former Mead Valley Crip with the moniker of Smoke." Another notation from August 2, 2006, reflected that defendant was a former member of the Mead Valley Gangster Crips, and went by the moniker Smoke. However, on September 18, 2007, defendant did not say that he was a former member of the gang; rather, he said that he was "actually" a Perris Loc Crip. At the bottom of the September 18, 2007, inmate assessment form defendant signed the document acknowledging that the information was true and correct.

Riverside County Sheriff's Deputy Fazio was assigned to the Perris station and worked in the gang unit. Deputy Fazio testified that Crip gangs were often "out to make money. They're looking for drug sales." Deputy Fazio had spoken to approximately 50 members of the Mead Valley Gangster Crips during his career. In 2002 or 2003, the

Mead Valley Gangster Crips merged with the Perris Loc Crips, in order to expand their territory. The Mead Valley Gangster Crips used the University of Michigan logo, which was blue, as a symbol of their gang. The Perris Loc Crips commonly used a Pittsburgh Pirates hat with a “P” on it. Typically, the Perris Loc Crips wore the baseball hats that were more flamboyant or creatively designed than the hat typically worn by baseball players on the field. It was also common for members of the Mead Valley Gangster Crips and Perris Loc Crips to use gang monikers.

Deputy Fazio testified that the drug trade was very important to Perris Loc and Mead Valley Gangster Crips. The primary drugs sold by the gang were rock cocaine and marijuana. Drug sales allowed the gang members to pay for lawyers and nice suits for gang members that were incarcerated and needed to appear in court. Profits from drug sales were also allegedly used to pay prison guards to deliver cell phones and drugs to incarcerated gang members. Deputy Fazio testified that a person who sold drugs within the Perris Loc and Mead Valley Gangster Crip territory was likely a member of the gang, because otherwise the gang would attack the person. Defendant’s residence, where he sold marijuana, was within the Mead Valley Gangster Crips’s territory.

Deputy Fazio has found that pit bulls “seem to be the dog of choice when it comes to gang members.” Deputy Fazio has also found that guns are very important to the Mead Valley Gangster and Perris Loc Crips. One of the gang’s rules was that “everybody will be armed.” Deputy Fazio testified that as of September 18, 2007, the

primary activities of the Mead Valley Gangster and Perris Loc Crips were violent assaults, robberies, burglaries, drug sales, and weapons possession.

Defendant's back was tattooed with the words, "Ready to die, are you?"

Defendant's left arm was tattooed with the word "Young." The word "young" is often used to pay homage to the Young Gunner clique within the Perris Loc Crips. Deputy Fazio testified that only a member of the gang's Young Gunner clique would have such a tattoo. "Smoke" was tattooed on defendant's right arm. Defendant also had a tattoo that read "Mom" and "RIP," but the "P" was crossed out. Members of Crip gangs will often cross out "P"s or "B"s, which can be symbols of their rival gang, the Bloods. Another tattoo on defendant's arm read, "Pain is Love," and the "P" was crossed out. Defendant had the letters "SS" tattooed on his hand. "SS" typically means southside. Mead Valley Gangster Crips and Perris Loc Crips predominately occupied the southern portion of the city of Perris. Another tattoo on defendant's hand read "Fuck you." The "C" was boldly tattooed, while the "K" was crossed out. "C" typically refers to Crips. Crip gang members cross-out "K"s that are next to "C"s, because "CK" is used to refer to "Crip Killers," i.e., people who kill members of Crip gangs.

## **DISCUSSION**

Defendant contends that the evidence supporting his gang enhancements (§ 186.22, subd. (b)(1)), and his conviction for actively participating in a criminal street gang (§ 186.22, subd. (a)), does not meet the substantial evidence standard. We disagree.



“Substantial evidence is evidence which is “reasonable in nature, credible, and of solid value.” [Citation.] ‘In reviewing the sufficiency of the evidence, we must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” [Citation.] We must presume in support of the judgment the existence of every fact that the trier of fact could reasonably deduce from the evidence. [Citation.]” (*People v. Medina* (2009) 46 Cal.4th 913, 919.)

A. SUBSTANTIVE OFFENSE

Section 186.22, subdivision (a) provides: “Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished . . . .”

1. *ACTIVE PARTICIPANT*

When defendant was processed at the county jail for the crimes in the instant case, he signed an intake assessment form that reflected he was “actually” a member of the Perris Loc Crips. Defendant’s signature on the document is an acknowledgement that the information on the form is true and correct. The foregoing is substantial evidence that defendant was an active participant in a street gang.

2. *CRIMINAL STREET GANG*

A “criminal street gang” is defined as an “ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the [enumerated] criminal acts . . .

having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.” (§ 186.22, subd. (f).)

Deputy Fazio testified that he has spoken to approximately 50 members of the Mead Valley Gangster or Perris Loc Crips during his career. During Deputy Fazio’s direct exam, he reviewed a multitude of photographs. When looking at the photographs, Deputy Fazio pointed out many gang members who appeared in the photographs, explained their gang tattoos, explained their gang hand signs, and explained the significance of various other details in the photographs, such as the locations where the photos were taken. Further, Deputy Fazio testified that he personally knew three or more members of the Mead Valley Gangster and Perris Loc Crips. The foregoing is substantial evidence that the Mead Valley Gangster and Perris Loc Crips are ongoing associations of three or more people.

Deputy Fazio testified that the primary activities of the Mead Valley Gangster and Perris Loc Crips are assaults, robberies, burglaries, drug sales, and possessing weapons. Deputy Fazio described the crimes of various members of the gang. For example, Trayvon Harris, a self-admitted member of the Perris Loc Crips, shot at a rival gang member from one car into another car, injuring the victim. The enumerated criminal acts included, assault (§ 245), robbery (§ 211), drug sales, burglary (§ 459), and shooting at an occupied motor vehicle (§ 246). (§ 186.22, subds. (e)(1), (e)(2), (e)(4), (e)(5) & (e)(11).) The foregoing is substantial evidence that the gang has, as one of its primary activities, the commission of one or more of the enumerated criminal acts.

Deputy Fazio testified about the history of the Mead Valley Gangster Crips and the Perris Loc Crips. When asked if the gang went by other names, Deputy Fazio testified, “I’ve heard P-Loc, I’ve heard Mead Valley, I’ve heard MVGC, I’ve heard Perris Crip, I’ve heard P-Locs, Locs, Frontline, Straight Locs . . . .” The Mead Valley Gangster Crips used the University of Michigan logo, which was blue, as a symbol of their gang. The Perris Loc Crips commonly used a Pittsburgh Pirates hat with a “P” on it as a symbol of their gang. Typically, the Perris Loc Crips wore baseball hats that were more flamboyant or creatively designed than the hat typically worn by baseball players on the field. Inside the Impala, Investigator Johnson found a black baseball hat with a large gold letter “P” on the front and smaller gold “P”s covering the remainder of the hat. The foregoing is substantial evidence that the gang has a common name or common identifying symbol, specifically, the name “Perris Loc Crips” and the symbol of the Pittsburgh Pirates “P.”

### 3. *PATTERN OF CRIMINAL GANG ACTIVITY*

A “‘pattern of criminal gang activity’ means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the [enumerated] offenses, provided at least one of these offenses occurred after the effective date of [the] chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons.” (§ 186.22, subd. (e).)

Deputy Fazio testified that on June 5, 2003, Damarsay Turner was driving with another person; the vehicle smelled of marijuana. A bag of marijuana was found inside

the vehicle's air vent; the bag contained 55 grams of marijuana. Damarsay Turner is a self-admitted member of the Perris Loc Crips, and was a member of the gang on June 5, 2003. Damarsay Turner was convicted of transporting marijuana. (Health & Saf. Code, § 11360, subd. (a).)

On September 7, 2005, Latravius Brian Gobert was found standing in front of an apartment complex, with rock cocaine hidden in his anal cavity, and he was approximately 25 feet from a shotgun hidden in a group of bushes. Gobert was a self-admitted member of the Perris Loc Crips, and was a member of the gang on September 7, 2005. Gobert was convicted of possessing cocaine base for sale. (Health & Saf. Code, § 11351.5.)

The sale, possession for sale, and transportation of controlled substances are part of the enumerated offenses within section 186.22, subdivision (e). (§ 186.22, subd. (e)(4).) The foregoing is substantial evidence that at least two Perris Loc Crips gang members committed two of the enumerated offenses on two separate occasions. Accordingly, substantial evidence supports the finding that the gang members engaged in a pattern of criminal gang activity.

#### 4. *KNOWLEDGE*

The evidence reflects that defendant admitted being a member of the Perris Loc Crips, and that he was at the victim's house, which is frequented by members of the Perris Loc Crips. Based upon this evidence, a trier of fact could reasonably infer that defendant knew of the gang members' criminal conduct, due to defendant's connections with the gang.

5. *PROMOTING, FURTHERING OR ASSISTING*

Deputy Fazio testified that the drug trade was very important to Perris Loc and Mead Valley Gangster Crips. Drug sales allowed gang members to pay for lawyers and nice suits for gang members that were incarcerated and needed to appear in court. Profits from drug sales were also allegedly used to pay prison guards to deliver cell phones and drugs to incarcerated gang members. Deputy Fazio testified that a person who sold drugs within the Perris Loc or Mead Valley Gangster Crip territory was likely a member of the gang, because otherwise the gang would attack the person.

Defendant's residence, where he sold marijuana, was within the Mead Valley Gangster Crips' territory. Marijuana packaged for sale was found at defendant's residence, along with a shotgun. Defendant's arms and hands were marked with gang tattoos. A Pittsburgh Pirates hat was found in the Impala at defendant's residence. Defendant admitted that he was a member of the Perris Loc Crips. Based upon the foregoing evidence, a trier of fact could reasonably infer that defendant was selling marijuana and that his drug sales benefitted the gang by providing money for prison contraband or other criminal gang activities, such as purchasing more drugs for members to sell. Accordingly, substantial evidence supports the finding that defendant willfully promoted, furthered, or assisted in felonious criminal conduct by members of the gang.

6. *CONCLUSION*

In sum, substantial evidence supports the finding that defendant actively participated in a criminal street gang with knowledge that its members engage in or

have engaged in a pattern of criminal gang activity, and that defendant willfully promoted, furthered, or assisted in the gang members' felonious criminal conduct.

B. GANG ENHANCEMENTS

The gang enhancement statute provides: “[A]ny person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony” receive an additional consecutive sentence. (§ 186, 22, subd. (b)(1).)

1. *FELON IN POSSESSION OF A FIREARM*

Deputy Fazio testified that one of the rules of the Perris Loc and Mead Valley Gangster Crips is that “everybody will be armed.” Based upon this testimony, substantial evidence supports a finding that defendant possessed a firearm at the direction of a criminal street gang.

Deputy Fazio testified that members of the Perris Loc or Mead Valley Gangster Crips often hid guns in strategic locations throughout the city, so that the gang members would always know where to retrieve a gun. A trier of fact could reasonably deduce from this evidence that defendant possessed his gun in order to further or assist criminal conduct by gang members, because the gang members knew that all other members were required to be armed, and therefore, knew that defendant would have the gun available for them, as part of their strategic stash of weapons. In sum, substantial evidence supports a finding that defendant possessed his gun to further or assist criminal conduct by gang members.

## 2. *POSSESSION OF A SHORT-BARRELED SHOTGUN*

Deputy Fazio testified that one of the rules of the Perris Loc or Mead Valley Gangster Crips is that “everybody will be armed.” Based upon this testimony, substantial evidence supports a finding that defendant possessed a short-barreled shotgun at the direction of a criminal street gang.

Deputy Fazio testified that members of the Perris Loc and Mead Valley Gangster Crips often hid guns in strategic locations throughout the city, so that the gang members would always know where to retrieve a gun. Deputy Fazio testified that Perris Loc or Mead Valley Gangster Crips will hide their guns in apartments, in bushes, and in fast food bags. Investigator Johnson testified that the primary purpose of a sawed-off shotgun is that it is easier to conceal than a shotgun with a full-length barrel. A trier of fact could reasonably infer from the foregoing evidence that defendant possessed a short-barreled shotgun as part of the Perris Loc Crips’ strategic stash of weapons, and that it was sawed-off in order to make the gun easier to hide. By keeping a shotgun available for gang members, defendant furthered or assisted in criminal conduct by gang members, by assuring them that a deadly weapon would be available at a moment’s notice if they needed a firearm.

### C. DEFENDANT’S ARGUMENTS

Defendant contends that the evidence supporting his gang enhancements and conviction for participating in a criminal street gang does not meet the substantial evidence standard, because the evidence is largely comprised of Deputy Fazio’s expert testimony. Defendant asserts that expert witness testimony is not sufficient to sustain a

conviction. Contrary to defendant's position, an expert's testimony may be used to establish the elements of a gang enhancement and substantive gang offense. (*People v. Gardeley* (1996) 14 Cal.4th 605, 620; *People v. Romero* (2006) 140 Cal.App.4th 15, 18.) Consequently, we find defendant's argument unpersuasive.

In regard to the enhancements, defendant argues that Deputy's Fazio opinion that defendant possessed the gun to benefit the gang "was pure speculation, untethered to any actual facts of this case." Defendant's argument fails to appreciate that the offense may be satisfied if the felony was committed for "the benefit of, at the direction of, or in association with any criminal street gang." (§ 186.22, subd. (b)(1).) In our analysis *ante*, we concluded that substantial evidence supports a finding that defendant possessed the sawed-off shotgun *at the direction of the gang*. Accordingly, we are not persuaded by defendant's argument.

In regard to the substantive gang offense, defendant asserts that substantial evidence does not support the findings that defendant was an active member of the gang, or that defendant knew of the gang's pattern of criminal activities. As noted *ante*, on his jail intake form for the instant offenses, defendant acknowledged that he was "actually" a member of the Perris Loc Crips. Further, defendant's knowledge of the gang's criminal activities can be inferred from defendant's active membership in the gang, and his presence at the victim's house, which was frequented by gang members. Consequently, defendant's argument is unpersuasive.



**DISPOSITION**

The judgment is affirmed.

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/s/ MILLER  
J.

We concur:

/s/ HOLLENHORST  
Acting P. J.

/s/ McKINSTER  
J.